

STANDING ORDER 4-09
NOTICE IN GUARDIANSHIP OF MINORS MATTERS

Pursuant to G. L. c. 190B, § 1-401 (b) of the Massachusetts Uniform Probate Code, to promote the well-being of the children of the Commonwealth who are the subjects of Guardianship proceedings, the Probate and Family Court establishes the following order for notice to parties in all Petitions for Appointment of Guardian of a Minor proceedings.

Petition for Appointment of Guardian of a Minor

Notice to Interested Parties

Definitions:

Interested Parties under G. L. c. 190B, § 5-206:

- (1) The minor, if the minor is 14 or more years of age and is not the petitioner;
- (2) Any person who has been awarded care or custody of the minor by a Court of competent jurisdiction, who is alleged to have had the principal care or custody of the minor, or with whom the minor has resided during the 60 days preceding the filing of the petition, excluding foster parents. If the Department of Children and Families has custody of the minor, it must be served;
- (3) Any living parent of the minor, excluding a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender or, if none, brothers and sisters 18 years or older or, if none, heirs apparent or presumptive;
- (4) The spouse if the minor is married;
- (5) Any person nominated as Guardian by the minor if the minor has attained 14 years of age;
- (6) Any parental or Guardian appointee whose appointment has not been prevented or terminated under G. L. c. 190B, § 5-203;
- (7) Any Guardian or Conservator currently acting for the minor in this Commonwealth or elsewhere; and
- (8) The United States Veterans Administration or its successor if the minor is entitled to any benefit, estate or income paid or payable by or through said Administration or its successors.

Order:

Upon the filing of the Petition for Appointment of Guardian of a Minor, the Court shall establish a date for hearing on the Petition and enter this date on the "Order and Notice."

For Petitions that also include a request for the appointment of a temporary Guardian (either with notice or *ex parte*), the date for hearing on the Petition shall be on or before the expiration of the temporary Guardianship. For all other Petitions, the date for hearing on the Petition shall be at least twenty-one (21) days after the filing of the Petition, but no more than thirty-five (35) days after the filing of the Petition.

Except as provided for in subsection "c" of this order, following the filing of Petition, the petitioner shall cause an "Order and Notice" and a copy of the Petition to be served by a constable, deputy sheriff, sheriff or other person approved by the Court on all interested parties. The Order and Notice shall be on a form issued or approved by the Court and shall be served with a copy of the Petition in the following manner:

(a) If the place of residence or whereabouts of an interested party is known, service shall be accomplished on the interested party by:

- (i) Delivery in hand to the party at least fourteen days before the date of hearing for the Petition. If the minor is above the age of fourteen years and has not nominated the Guardian proposed in the petition in conformance with the requirements of G. L. c. 190B, § 5-207, then service shall be made in the same manner on the minor; or
- (ii) Written and duly notarized endorsement of the party's acceptance of service on the Order and Notice of hearing, whether within or without the Commonwealth.

(b) If the place of residence or whereabouts of an interested party is known, but the petitioner has been unable to accomplish service by delivery despite efforts to do so, the Court, on a written motion of the petitioner with an affidavit setting forth the efforts made, may order that service be accomplished on that interested party, either within or without the Commonwealth, by leaving a copy of the Petition and Order and Notice at his or her last and usual place of residence, and by mailing by first-class mail copies to the interested party at least fourteen (14) days before the date of the hearing for the Petition, or by some other method as ordered by the Court.

(c) If the place of residence or whereabouts of an interested party is not known or cannot be ascertained with reasonable diligence, the Court shall order that service be accomplished on that interested party, either within or without the Commonwealth, by mailing by first-class mail to the interested party at his or her last known address, at least fourteen (14) days before the date of the hearing for the Petition, or by some other method as ordered by the Court. In addition, the Court shall issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the register of probate having general circulation in the county where the proceeding is pending, the publication to appear at least seven days before the date of the hearing for the Petition, unless otherwise directed by the Court.

(d) If the identity of an interested party is not known, service shall be accomplished on that interested party by publication as follows: the Court shall issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the register of probate having general circulation in the county where the proceeding is pending, the publication to appear at least seven days before the date of the hearing for the Petition, unless otherwise ordered by the Court.

(e) If the minor is entitled to any benefit, estate, or income paid or payable through the United States Veterans Administration or its successor, service shall be made on the Veterans Administration by regular first-class mail at least seven days before the date of the hearing for the Petition.

(f) If the minor is in the custody of the Department of Children and Families, service shall be made on the Department of Children and Families by regular first-class mail at least seven days before the date of the hearing for the Petition.

(g) No notice need be given in the following circumstances:

- (1) to a person entitled to notice under this rule who has consented in writing to the allowance of the Petition, if the consent is filed in Court;
- (2) to a parent who signed a voluntary surrender in conformance with G. L. c. 210, § 2, or
- (3) if the Court has terminated parental rights pursuant to G. L. c. 210, § 3.

(h) The officer or other person making service in accordance with this rule shall make a return of service on a copy of the Order and Notice, which the petitioner shall promptly file with the Court.

APPLICABILITY OF ORDER TO OTHER PROCEEDINGS

This order for notice shall apply to all petitions relating to the Guardianship of a minor, including, but not limited to, Petitions for Termination of Appointment of Guardian of a Minor.